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(Cite as: 172 F.3d 39)

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U.S., By Dept. of Defense ex rel. Pentagen
Technologies Intern'l, Ltd. v. CACI International
Inc.

C.A.2 (N.Y.), 1999.

NOTICE: THIS IS AN UNPUBLISHED
OPINION. (The Court's decision is referenced in a
Table of Decisions Without Reported Opinions"
appearing in the Federal Reporter. Use FI CTA2 s
0.23 for rules regarding the citation of unpublished
opinions.)

United States Court of Appeals, Second Circuit.

UNITED STATES OF AMERICA, By the
Department of Defense, Ex rel.,
PENTAGEN TECHNOLOGIES
INTERNATIONAL, LIMITED and Russell D.
Varnado, Plaintiffs-Appellants,
v.

CACI INTERNATIONAL INC., Caci Systems
Integration, Inc. and Caci, Inc.-Federal, First
Defendants-Appellees,
INTERNATIONAL BUSINESS MACHINES
CORPORATION, Lockheed Martin Corporation,
American Telephone & Telegraph Company, PRC,
Inc., I-Net, Inc. and Statistica, Inc., Second
Defendants-Appellees.

No. 97-6326.

Feb. 5, 1999.

Appeal from the United States District Court for the
Southern District of New York, Robert W. Sweet,
Judge.

Joel Z. Robinson, New York, NY, for Appellee.
J. William Koegel, Jr., Steptoe & Johnson LLP,
Washington, DC, for first Defendants-Appellees.
Glenn Colton, Assistant United, States Attorney for
the Southern District of New York, New York, NY,
for the United States as Amicus Curiae.

Present NEWMAN, PARKER and SOTOMAYOR,
Circuit Judges.

SUMMARY ORDER

*1 Plaintiffs-Appellants Pentagen Technologies
International, Ltd. ("Pentagen") and Russell D.
Varnado appeal from a decision entered August 18,
1997 by the United States District Court for the
Southern District of New York, dismissing their
action brought under the False Claims Act, 31
U.S.C. §§ 3729-3733, for lack of subject-matter
jurisdiction.

This suit represents the latest in a number of
actions brought by Pentagen against
Defendants-Appellees arising out of the same set of
operative facts. In *United States ex rel. Pentagen v.
CACI Int'l, Inc.*, No. 94 Civ. 2925(RLC), 1996 WL
11299 (S.D.N.Y. Jan. 4, 1996) ("*Pentagen V*"),
Pentagen attempted to bring an action under the
False Claims Act, but this action was dismissed for
lack of subject-matter jurisdiction. Under 31 U.S.C.
§ 3730(e)(4), no court has jurisdiction over any
action brought by a private party under the False
Claims Act that is "based upon the public disclosure
of allegations or transactions in a criminal, civil, or
administrative hearing ... unless ... the person
bringing the action is an original source of the
information." In *Pentagen V*, Pentagen had
sufficient opportunity to litigate the issues of
whether its information was publicly disclosed, and
whether Pentagen was the "original source." Therefore,
collateral estoppel bars Pentagen from relitigating
these issues in the instant action.

Russell Varnado was not a party to *Pentagen V*,
so he is not barred from pursuing his claims by
virtue of collateral estoppel. However, his claims
are nonetheless barred for lack of subject-matter
jurisdiction. Specifically, 31 U.S.C. § 3730(b)(5)
provides that "[w]hen a person brings an action
under this subsection, no person other than the
Government may intervene or bring a related action
based on the facts underlying the pending action."
Because Varnado's action, when filed, was based on

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the same facts underlying the then-pending
Pentagen V, no federal district court had
jurisdiction to entertain his claims.

For these reasons, the judgment of the District
Court is AFFIRMED.

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U.S., By Dept. of Defense ex rel. Pentagen
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